



## Fast Track Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | The Department of Human Resource Management   |
| <b>Virginia Administrative Code (VAC) citation</b> | 1 VAC 55 –20-320  |
| <b>Regulation title</b>                            | Commonwealth of Virginia Health Benefits Program  |
| <b>Action title</b>                                | This amendment removes the requirement that a child be claimed by an employee as a dependent on their federal income tax return, and sets up dependency criteria based on relationship, residency, age, and self-support. |
| <b>Document preparation date</b>                   |   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

Enter statement here:

The current definition of a dependent was based on IRS regulations which allowed an employee to cover certain dependents without incurring imputed income based on the state's contribution to the plan. The Working Families Tax Relief Act (WFTRA) went into effect in December of 2004 and redefined who is considered a qualifying dependent for tax purposes under IRS §152. WFTRA removes the requirement that a qualifying child be claimed by an employee as a dependent on their federal income tax return and sets up dependency criteria based on relationship, residency, age, and self-support. These amended regulations bring the state regulations in line with WFTRA .

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

**Enter statement here**      **Action title:** Amends section 1VAC55-20 et seq to assure that it is in compliance with legislation that has been passed on the state and federal level  
**Date action was taken:** 6/14/2004  
**Agency name:** Department of Human Resource Management

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

Enter statement here  
 IRS §152 defines a qualifying child for health benefit plan purposes.

§ 2.2-2818 of the Code of Virginia authorizes the Department of Human Resource Management (DHRM) to establish a plan for providing health benefits to state employees.

§ 2.2-1204 of the Code of Virginia authorizes the Department of Human Resource Management (DHRM) to establish a plan for providing health benefits to TLC employees.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

Enter statement here:  
 The Department of Human Resource Management (DHRM) has found that employees find the provision to claim a child on their federal income tax return confusing in that it is often impossible to ascertain exactly when a dependent child is no longer considered eligible to be claimed on their taxes. Compounding the problem, IRS Section 125 requires membership changes to be made on a prospective basis and within a reasonable time period measured from the date that ineligibility occurred. Due to the uncertainty surrounding dependent eligibility and

the IRS time limitations, employees may be placed in the situation where a dependent is no longer eligible for coverage, but they must continue to pay for the higher membership level until the next plan open enrollment. Furthermore, the current regulations make it very difficult to monitor compliance, since the plan does not have access to the information that is required to make such dependent eligibility determinations.

The above results in an inequity in that employees in identical circumstances may or may not be covering a child based on the employee's understanding of the eligibility criteria.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

Enter statement here

Currently the regulations governing the eligibility of dependent children are confusing to the employee. Therefore, it is DHRM's opinion that they cannot be fairly administered. The usual regulatory process can take a year or longer to have an amendment approved. DHRM believes that this amendment is non-controversial, that it does not have any fiscal impact, and will have a positive affect on employee morale.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

Enter statement here

Currently the regulations stipulate that dependent children covered by these plans must be eligible to be claimed by the employee as a dependent on his federal income tax return. The amended regulations would remove this stipulation (as allowed by WFTRA), setting dependency criteria based on relationship, residency, age, and self-support. This amendment continues to allow unmarried natural or legally adopted children, stepchildren as well as "other covered children" defined in the regulations to remain as covered dependents until the end of the year in which they turn age 23, so long as they live in the home with the employee (or away at school) and depend upon the employee for more than one-half of their support.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

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Enter statement here

Advantages

- The primary advantage of this amendment is that it creates a plan rule that is easily understood and adhered to by plan members.
- The rule would continue to provide health benefit coverage for dependent children who want to continue their education, but who have to work due to economic necessity. This would be especially beneficial to our lower paid employees.

Disadvantages

- Currently natural or adopted children who are otherwise eligible for coverage may be covered by the employee whether or not they live with the employee. The amended regulations require that the child live with the employee, or if the employee is divorced, with the child’s other parent. This is necessary in order to avoid the possibility of the employee incurring imputed income by the child not meeting the definition of a qualifying child under WFTRA. However, these regulations will not affect any state order which requires the employee to cover a child under the plan.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

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| <b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b> | None  |  |
| <b>Projected cost of the regulation on localities</b>  | None  |  |
| <b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>  | State and TLC employees with dependent children |  |
| <b>Agency’s best estimate of the number of such</b>  | 83,000  |  |

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|---|------|
| <b>entities that will be affected</b>   |      |
| <b>Projected cost of the regulation for affected individuals, businesses, or other entities</b> | None |

Enter any other statement here

The affected population is young and usually healthy. By liberalizing the eligibility provisions for dependent children the plan should on the aggregate not incur any additional claim expense and may see a slight increase in revenue.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Enter statement here

None

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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Enter statement here

These regulations will not have any negative effects on the institution of the family or family stability. They will not erode the institution of marriage, and will not discourage economic self-sufficiency, self-pride or the assumption of family responsibility. They will not have an effect on disposable family income.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement  | Proposed change and rationale  |
|------------------------|--|--|--|
| 320                    |  | Requires the employee to claim his or her dependent child on their federal income tax return in order to cover the child in the Health Benefits Plan for state employees | Removes the requirement that a child be claimed on the employee's federal income tax return. Currently eligibility for dependent children is based on the age of the dependent child, where the child resides, marital status, and the employee's ability to claim the child on their federal income tax return as a dependent. The Department of Human Resource Management (DHRM) has found that employees find the provision to claim a child on their federal income tax return confusing in that it is often impossible to ascertain exactly when a dependent child is no longer considered eligible to be claimed on their taxes. Compounding the problem, IRS Section 125 requires membership changes to be made on a prospective basis and within a reasonable time period measured from the date that ineligibility occurred. Due to the uncertainty surrounding dependent eligibility and the IRS time limitations, employees may be placed in the situation where a dependent is no longer eligible for coverage, but they must continue to pay for the higher membership level until the next plan open enrollment. Furthermore, the current regulations make it very difficult to monitor compliance, since the plan does not have access to the information that is required to make such dependent eligibility determinations. |

Enter any other statement here

Currently natural or adopted children who are otherwise eligible for coverage may be covered by the employee whether or not they live with the employee. The amended regulations require that the child live with the employee, or if the employee is divorced, with the child's other parent. This is necessary in order to avoid the possibility of the employee incurring imputed income by the child not meeting the definition of a qualifying child under WFTRA. However, these regulations will not affect any state order which requires the employee to cover a child under the plan.